IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5062 of 2005
with
SPECIAL CIVIL APPLICATION No 5063 of 2005
with
SPECIAL CIVIL APPLICATION No 5064 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRATHAMKUMAR
Versus
INDIAN INSTITUTE OF MANAGEMENT

Appearance:
1. Special Civil Application No. 5062 to 5064 of 2005
MR ALBERT I. TALEGAWKAR with BIJAL CHHATRAPATI and
MR JAY P. AMIN for SINGHI & CO for Petitioner No.1
MR PARESH UPADHYAY for Respondent No. 1
MR SAURIN MEHTA FOR NANAVATI & NANAVATI for Respondent No. 2
MR DHAVAL M BAROT for Respondent No. 3
NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/04/2005

COMMON CAV JUDGEMENT

Rule. Shri Paresh Upadhyay, the learned Advocate waives service of Rule on behalf of the respondent No.1. Shri Savrin Mehta, the learned advocate for M/s Nanavati and Nanavati Associates waives service for rule. Shri Dhaval M. Barot, the learned advocate waives service of Rule for respondent No.3 - Institute.

With the consent of the learned advocates for the parties, all three matters were heard together and as the common questions of law and facts arise in all three special civil applications, they are being disposed of by this common judgment.

.RS 2.

#. The grievance voiced in the present Special Civil Applications is that though the petitioners have secured approximately 98.99 % of marks in the Common Entrance Test (hereinafter referred to as the "CAT" for short) conducted by the respondent No.1 for the purpose of admission to Post Graduate Diploma and Fellow Programmes in IIMs for the academic year 2005, they are not being considered eligible for admission and at the very threshold, they are informed that they will not be permitted to participate in further admission process.

#. All the petitioners have studied in the respondent No.4 University i.e. Dhirubhai Ambani Institute of Information and Communication Technology in B.Tech. Programme and are in the process of completing prescribed four years B.Tech. from the said University. The respondent No.4 University is declared as deemed University and is established by the Act No.6 of 2003 of the Government of Gujarat which is located at Gandhinagar. It is the case of the petitioners that as per the University Grants Commission Act, 1956 which is an Act of Parliament of India, the University whether established by an Act of Parliament or by Act of the State Government, stands at par with any other University and is competent to prescribe course, hold examination and confer degrees and other qualification. It is the case of the petitioners that as the petitioners wanted to get admission for the course of Post Graduate Diploma and Fellow Programmes in IIMs for 2005 which are full time residential courses open to students from all disciplines and therefore, they had appeared in the common admission test - 2004 (hereafter referred to as the "CAT") for the admission to the academic year 2005-07. It is

required to be noted that Indian Institute of Management ("IIM, Ahmedabad" for brevity) held CAT for admission to the aforesaid Fellow Programmes which are open to the students from all disciplines and there are six IIMs in India including IIM, Ahmedabad and so far as the this year is concerned, IIM, Ahmedabad has organized admission for students of Post Graduate and Fellow Programmes in management holding CAT and it is the case of the petitioners that mainly on the basis of performance at the CAT by candidates, admissions are processed. It is the case of the petitioners that the petitioner of Special Civil Application No.5062 of 2005 has secured 98.88 % of marks in the CAT, the petitioner of Special Civil Application No.5063 of 2005 has secured 99.03 % marks in the CAT and the petitioner of Special Civil Application No.5064 of 2005 has secured 99.86 % of marks in the CAT and inspite of that, the petitioners are not considered to be eligible for participating in further admission process and therefore, they have approached this Court by way of present special civil applications.

It is the case of the petitioners that as the respondent No.4 University from where they have studied in B.Tech. Programme, is not recognised by the respondent No.2 i.e. Association of Indian Universities (hereinafter referred to as the "AIU" for short). The petitioners are not considered eligible for admission in PGP and are not permitted to take part in further admission process. It is submitted that so far as the respondent No.2 "AIU" is concerned, it is not the authority which grants recognition and in fact, according to their information and knowledge, the respondent No.4 University had already made an appropriate application with the respondent No.2-AIU to be its member and so far as the respondent No.2 AIU is concerned, it is a private body registered under the Registration of Societies Act, 1860 created by a group of Vice Chancellors of Universities and does not have any responsibility or authority to accord recognition of degrees of Indian Universities and inspite of that, the respondent No.1 IIM is insisting that for the purpose to be eligible for admission in IIM, University where the student has studied, must have been recognised by AIU. It is further submitted that imposing a condition to be eligible for getting admission in Post Graduate Programmes in management in IIM, a candidate must have got atleast three years Bachelor Degree from the University which is recognised by the AIU, is most unreasonable, arbitrary, and has nothing to do with selection process for admission and therefore, the petitioners have preferred the present special civil applications under Article 226

of the Constitution of India seeking declaration that stipulation of recognition in the admission procedure of obtaining a recognition of the degree by AIU is arbitrary, malafide, capricious, bad in law, and illegal. It is also prayed for an appropriate order or directions directing the respondent No.1 IIM, Ahmedabad to allow and include the petitioners in the admission procedure and consider their case and grant admission to the petitioners subject to fulfilling other stipulations on merits by the respective petitioners.

#. Shri A.I.Talegaonkar, the learned advocate with Shri Bijal Chhatrapati, the learned advocate, so also, Shri Jay Amin, the learned advocate for M/s Singhi & Co. appear on behalf of the petitioners. The learned advocates appearing on behalf of the petitioners have vehemently submitted that it is very unfortunate that though the petitioners have secured 99.98 % of marks in the "CAT" conducted by the very IIM, Ahmedabad, the petitioners are not considered eligible for further admission process and are not called for group discussions and personal interviews. It is further submitted that the petitioners have studied in the respondent No.4 University which is a deemed University established by Act No.6 of 2003 of Government of Gujarat and is a very reputed University. It is also further submitted that under the provisions of the University Grants Commission Act, 1956, the respondent No.4 University stands at par with any other University and is competent to prescribe the course, hold examination, and confer degrees and other qualifications. Thus, the respondent No.4 is also recognised by the University Grants Commission. It is further submitted that "AIU" does not have responsibility or authority to accord recognition of degrees of Indian University. Under the circumstances, insistence on the part of the respondent No.1 IIM Ahmedabad of obtaining recognition of the degree by AIU is not only illegal but is also unreasonable and arbitrary. It is further submitted that for the purpose of seeking admission to the PGP and PGP - ABM in the IIMs, the process is in two stages. CAT is the first step in the process of seeking admission and after the student appears in CAT and the merit list is prepared on the basis of merits, in the further process of admission, candidates who are shortlisted within merits criteria, are called for group discussion. The selection procedure is two stage process. In the first stage, the candidate to be called for group discussion and personal interviews are short-listed from amongst those who have applied for IIM's Post Graduate Programmes. CAT score is one of inputs used in drawing up the short list and the other

inputs used are past academic background and achievements and post degree working experience. In the second stage, the candidates to be admitted to the Post Graduate Programmes are selected from amongst those who have attended group discussion and personal interviews. In preparing the admission list, the inputs such as performance at group discussion and personal interviews, CAT scores, academic background and achievements, extra curriculum activities and post degree working experience are taken into consideration. It is, therefore, submitted that so far as admissions are concerned, it is solely based upon the merits and performance of candidates alone. Considering the CAT score, performance in group discussion and personal interviews, admissions are given. It is, therefore, submitted that to be eligible for even allowing the candidates for group discussion and personal interviews and / or for getting admission in Post Graduate Programmes, a candidate must have Bachelor Degree or equivalent any discipline recognised by the AIU, is absolutely unreasonable, arbitrary and as such, has no nexus with the admission process. Therefore, it is submitted that action of the respondent No.1 in not considering the petitioners as eligible for even group discussion and not calling the petitioners for personal interviews, requires to be quashed and set aside. It is submitted that stipulation of recognition in the admission procedure of obtaining recognition of degree by AIU is absolutely unwarranted. It is also submitted that when the petitioners have studied and are in the process of completing four years B.Tech. Programme from the University which is deemed University established by the Act No.6 of 2003 of the Government of Gujarat, and more particularly, when the respondent No.2 AIU has no authority and / or the responsibility to accord recognition of degrees of Indian Universities, the aforesaid stipulation of recognition of a degree from AIU, requires to be quashed and set aside and the respondent No.1 is to be directed to include the petitioners in admission procedure and to allow the petitioners to participate in the group discussion and further to direct the respondent No.1 to conduct personal interviews of the petitioners and directing the respondent No.1 to consider the case of the petitioners for admission in Post Graduate Programmes on merits.

#. It is also further submitted that the authority granted to the AIU restricts only to foreign qualification and is relevant only for employment purpose and not for academic purposes and the AIU does not have any right or authority as regards grant of recognition to academic programmes of Indian University. It is

submitted that when the petitioners have studied and are in process of completing prescribed four years' B.Tech. Programmes from respondent No.4 University which is recognised by the State of Gujarat, not to consider the degree from the said respondent No.4 University and to consider the degree only recognised by the respondent No.2 AIU is not only unreasonable, but most arbitrary and illegal, which requires to be quashed and set aside. It is submitted that the petitioners had carried on bonafide correspondence with the respondent No.1 and the petitioners are informed that the respondent No.3 should be a member of AIU and in that event only they will accept and allow the petitioners for further admission procedure and having failed to get any justice from the respondent No.1, the petitioners have approached this Court. It is further submitted that according to information and knowledge of the petitioners, though not required the respondent No.3 University had already applied for membership of the respondent No.2 AIU which is pending since last two years, for which, the petitioners should not be made to suffer. It is submitted that it is the fundamental rights of the petitioners to get admission in any of the institutions on merits and refusing to consider the case of the petitioners for further admission process itself, is violative of fundamental rights of the petitioners. To reject and / or disallow the petitioners at the threshold and without allowing the petitioners to take part in group discussion and not taking personal interviews of the petitioners on merits itself is violative of fundamental rights of the petitioners. It is submitted that it is a different case that after a group discussion and / or the personal interviews, the petitioners may not get an admission but to deny an opportunity to the petitioners at the threshold and not allowing the petitioners to participate in the group discussion and not taking the personal interviews of the petitioners only on the ground that the University from where the petitioners have studied, is not recognised by AIU, which is not an authority to grant recognition, is absolutely arbitrary, unreasonable and illegal which requires to be quashed and set aside.

#. It is further submitted that in fact, time is granted upto 30th June, 2005 to procure the qualification and by 30th June, 2005 it might be that the respondent No.4 though not required, might get membership of the respondent No.2 - AIU and therefore, the petitioners should have been allowed to participate in the group discussion on successful, their personal interviews ought to be taken by the respondent No.1. Relying upon the

affidavit-in-reply filed on behalf of the respondent No.1 - AIU to the effect that AIU is a well acclaimed recognised association constituted and established with a view to promoting the University activities by way of sharing information and increasing cooperation in various fields of education and the membership Traditional University, professional University, deemed University and institutions of national importance and also to the effect that AIU does not have responsibility or authority to accord recognition of degrees of Indian Universities and that AIU has never written insisting upon the IIMs to provide such a stipulation, the learned advocate appearing on behalf of the petitioners have submitted that under those circumstances, insistence on the part of the respondent No.1 to have degree recognised by the AIU is absolutely unwarranted, unreasonable and arbitrary, which requires to be quashed and set aside and it is requested to direct the respondent No.1 to consider the case of the petitioners for further admission process, such as, group discussion and personal interviews etc. for the purpose of getting admission in Post Graduate Programmes in management in IIMs and therefore, requested to allow the present special civil applications accordingly.

#. Shri Paresh Upadhyay, the learned advocate appears on behalf of the respondent No.1 - Indian Institute of Management, Ahmedabad (hereinafter referred to as the "IIM" for short). Affidavit-in-reply and further affidavit-in-reply are also filed on behalf of the respondent No.1 IIM. All three petitions are opposed by the IIM on the following grounds.

(i) The respondent No.1 - Institute is a pioneer in the field of management education in India and is widely regarded as the best business school in the country. Its flagship programme i.e. Post Graduate Programme in Management to which the petitioners are seeking admissions, is a highly rated programme not only in India but also abroad. In order to achieve and maintain the high standard of its programme, it is essential, amongst other things, to ensure that the participants admitted to the programme also bring with them certain standard of basic qualification. Therefore, for respondent No.1 IIM, it was considered prudent to prescribe some kind of quality certification of qualification for joining the programme and for this purpose, while exercising its right to prescribe eligibility criteria for its own academic programmes, it has been decided that the candidates aspiring for admission to their PGP should have a bachelor's degree recognised by the Association of

Indian Universities.

(ii) So far as the AIU is concerned, it has a broad range of academic and administrative functions including serving as an Inter-University Organisation, acting as a liasion between the universities and the Government (Central as well as the State Governments) and cooperating with other universities or bodies (national or international) in matters of common interest, and acting as the representative of Universities of India, and importantly, assisting Universities in obtaining recognition for their degrees, diplomas and examinations from other universities, Indian as well as foreign. Its members include traditional universities, open universities, open universities, professional universities, Institutes of National Importance and deemed-to-be Universities and at present 277 members including 60 deemed universities, of these 119 are traditional universities. With above object and considering status of the AIU, it has been decided by IIM that only those Universities / Institutes who are reasonably good, and recognised by the AIU, their students are considered eligible for admission to PGP.

(iii) The object to have recognition by AIU is that IIM wants to take care of situation and wants to admit only those students who are coming from a reasonably good university / institute and therefore, criteria is fixed that only those Universities / institutions which are recognised by AIU should be considered eligible for the purpose of admission in IIM, meaning thereby, a candidate not from any university / institute but candidates coming from a reasonably good institutions / universities are considered to be eligible for the purpose of admission.

(iv) Bulletin was published in the month of July, 2004 and by public notice in all leading newspapers specifying interalia eligibility criteria and procedure for application for CAT to be held on November 21, 2004 was issued also in the month of July, 2004 and it is applicable for all six IIMs in the Country and the petitioners were also knowing about the same since July, 2004 and inspite of that, they participated in the CAT and knowing full well that the University from where the petitioners have studied is not recognised by AIU, now it is not open to the petitioners to challenge the said criteria and the selection having once participated in the selection process.

(v) While making an application to appear in CAT, the respective petitioner has declared that;

"I certify that I satisfy the eligibility requirements of the programmes. I have applied for and that I have furnished correct information. I agree to abide by the IIMs' decisions on all matters regarding this application"

Having given assertion in the aforesaid manner, the petitioners appeared and when it is now found that the petitioners are not fulfilling the eligibility criteria, meaning thereby, the institute from where the petitioners have studied, is not recognised by AIU, it is not open for the petitioners now to challenge the same, more particularly, when the common admission test was held on 21.11.2004, for which, 1,37,426 candidates were issued admit cares and the result of the said test was declared on 21.12.2004 and all the candidates were issued their score cards. After result of the CAT, further admission process is already completed, meaning thereby, the group discussions as well as personal interviews for eligible candidates are already over and now only declaration of final list of the candidates would be made available within a short time and therefore also, it is now too late to challenge the same.

(vi) The respondent No.3 - Institute while referring the eligibility criteria, had requested IIM vide its letter dated 27.7.2004 to the effect that the said Institute will be grateful if the CAT Committee kindly consider and permit its students to appear for the test and its students may be admitted only after they provide membership from AIU and that the Institute undertakes this responsibility to provide proof to the CAT Committee, IIM before admissions are finalised and the respondent No.3 Institute had also informed IIM that it being the statutory University, does not need AICTE approval. However, it had already applied for AIU membership immediately and the same is pending.

(vii) The relaxation of time upto 30th June, 2005, is given only for limited purpose of producing certificate from the Principal of the respective Institute stating that the candidate has appeared in examination in all subjects required for obtaining Bachelor's degree and the said relaxation cannot be stretched to the extent that even the institute can claim that they would obtain necessary recognition by that time limit as was sought to be done by respondent No.3.

(viii) To prescribe the eligibility criteria is the

policy decision and the High Court in a petition under Article 226 of the Constitution of India should not interfere with the same and the same is considered to be an administrative decision.

In support of the aforesaid contentions, Shri Paresh Upadhyay, the learned advocate appearing on behalf of the IIM has placed reliance on the following decisions.

(1) HEMANT L. LEUVA. V. H.S.SHAH, 1997 (1) GLR 853 - para-13
(2) STATE OF GUJARAT AND ANOTHER V. BRIJ KISHORE GARG, 2000 (1) GLR P.884 - para- 11
(3) STATE OF RAJASTHAN AND OTHERS V. LATA ARUN, 2002 (6) SCC p.252 para-10
(4) KRISHNA PRIYA GANGULY ETC. V. UNIVERSITY OF LUCKNOW AND OTHERS, 1984 SC p.186 - para-19
(5) RAJENDRA PRASAD MATHUR V. KARNATAKA UNIVERSITY AND ANOTHER, 1986 SC p.1448 - para-7
(6) ASHISH P. JOSHI V. GUJARTA UNIVERSITY, 2001 (3) GCD p.2394 (Guj) - para-4
(7) RAJENDRA R. DAVE V. GUJARAT SECONDARY EDUCATION BOARD AND ANOTHER, 1980 (2) GLR p.318 - para-7
(8) PARITOSH MAGHRAJ CALLA V. GUJARAT UNIVERSITY AND ANOTHER, 1996 (1) GLR p.640 para- 7,8,11,12, 16.
(9) DILIP K. DOSHI AND ANOTHER VS. VICE CHANCELLOR, AND OTHERS, 1987 (1) GLR p.411 - para-12

(ix) Assuming that stipulation in question appears to be harsh and inconvenient to some of the candidates, it is not open to the petitioners to challenge the same after having participated in the selection process with knowledge of eligibility of criteria and open eyes and that too at the concluding stage of admission process, more particularly the same is likely to affect all six IIMs.

(x) So far as the final prayer is concerned, the same cannot be granted at this stage as the group discussion as well as personal interviews of the eligible candidates even after shortlisting are already over and the selection process is already concluded and only declaration of the final list is to be published and therefore, it is requested to dismiss the present special civil applications and not to grant any relief as prayed for.

#. Shri Saurin Mehta, the learned advocate appears on behalf of the respondent No.2 - AIU and the affidavit-in-reply is also filed on behalf of the

respondent No.2 - AIU. It is submitted that AIU is represented by Vice Chancellors / Directors of the different Universities / Educational Institutes and AIU has framed its own Rules and Regulations which are registered with the Registrar of the Societies under the provisions of the Societies Registration Act. The AIU representatives are elected and / or nominated on the various national bodies. AIU also nominates four members on the Council of Association of Commonwealth Universities, London. AIU organizes joint meeting of Vice Chancellor / Directors of Member Universities, Institutes with the heads of Apex body to consider important policy matters concerning higher education. Thus, it is submitted that AIU is a well acclaimed, reputed association constituted and established with a view to promoting University activities by way of sharing information and increasing cooperation in various fields of education and the membership includes Traditional Universities, Professional University, Deemed University and Institutes of national importance. It is further submitted that as the functions and the role being discharged by the AIU, over the years, have earned lot of acclaim amongst the Universities and Institutes, most of reputed self financed institutions and universities of different States have volunteered to be a member of AIU and there are 280 reputed Universities / Institutes, members registered with AIU. It is further submitted that the respondent No.3 Institute / University has also made an application to be a member of AIU. However, due to pendency of large number of applications, the same has not been decided. It is further submitted that even for the purpose of granting membership, a detailed inquiry is being made and a special team visits the institute / university and only thereafter membership is granted. With reference to para-15, it is admitted that AIU does have responsibility or authority with regard to grant of recognition to academic accord degree of Indian University and that AIU has never written or insisted upon IIMs to provided such stipulation. It is further admitted by AIU in its reply while referring to para-15 of the petition that such a stipulation had never appeared in any eligibility criteria of any Educational Institute. It is also further submitted that AIU does not claim any right or responsibility with regard to grant of recognition to academic degree of Indian University.

#. Shri Dhaval Barot, the learned advocate appears on behalf of the respondent No.3 - Institute i.e. Dhirubhai Ambani Institute of Information and Communication Technology from where the petitioners have studied and

affidavit-in-reply is also filed on behalf of the respondent No.3. It is submitted that though the stipulation which is provided while deciding eligibility criteria, is unreasonable and arbitrary, still, the respondent No.3 has already applied for membership of AIU in the year 2003 but their application is not decided and the Visiting Committee has also visited the University and it is submitted that because of delay on the part of the respondent No.2 in granting membership, the candidates, means, their students should not suffer. It is submitted that the respondent No.3 is deemed University and the said University is also one of the best Universities and is giving and imparting best education. Thus, as such, the respondent No.3 has supported the petitioners.

##. Heard the learned advocates appearing on behalf of the respective petitioners.

##. Here the question is with regard to future of three meritorious students who have secured more than 98% of marks in the Common Admission Test (CAT) conducted by the very IIMs for admission to Post Graduate Programme and one of the petitioners has even secured 99.98 % of marks in CAT. The petitioners are denied opportunity to further participate in the admission process and to consider their case for admission on merits in IIMs only on the ground that the University from where the petitioners have studied is not recognised by the Association of Indian University. Therefore, the question which is required to be considered is, whether such a stipulation while considering the eligibility criteria is reasonable and whether it has any nexus with admission / admission process or not ? Considering the admission process which will be dealt with hereinafter, it appears that admission in PGP in IIMs is solely based upon the merit and the performance of an individual candidate and not depending upon the marks obtained by the candidate while studying in institute / university and while obtaining Bachelor's degree or equivalent. Therefore, it, prima facie, appears that considering the selection process, it hardly matters from where the petitioner has studied. The selection process for admission in IIM can be said to be in three stages. The first stage is to appear in Common Admission Test (CAT), the second stage is group discussion and third stage is personal interview. For the purpose of admission, a candidate has to appear in CAT. After result of CAT, the candidates are shortlisted and called for group discussion. So far as group discussions are concerned, approximately ten candidates to sit for group discussions

in presence of the Professors and other academicians. Even at that stage, though the candidate might be at Serial No. 1 or 2 or at the top in the merit list of CAT, still, he can be told after group discussion that he is not fit for admission. So, at that stage, there will be further shortlisting. After the candidate is found eligible and / or found meritorious after group discussion, and even after shortlisting, a candidate is called for personal interview. At that stage also, individual merits and performance of the candidate is required to be considered for actual admission. In other words, after successful in CAT examination and even after successful in group discussion, a candidate may not be selected for admission. As stated in the Bulletin itself, the CAT is the first stage in the process of seeking admission to PGP. Thereafter, the candidates to be called for group discussion and personal interview are short listed from amongst those who have applied for IIM Post Graduate Programmes and CAT's score is one of the inputs used in drawing up the shortlist. Candidates to be admitted to the PGPs are selected from amongst those who attended group discussion and personal interviews and as per the bulletin, in preparing the admission list, inputs as such performance in group discussion and personal interview, CAT score, academic background and achievements, extra curriculum activities and post degree working experience are taken into consideration. Thus, shortlisting of candidates for group discussion and personal interviews and final selection for admission to the Post Graduate Programmes, are based on multiple criteria and not on the CAT score alone. Thus, as per the IIM, it is possible that a candidate with higher CAT score than another candidate may not be short-listed for group discussion and personal interview the candidate may not be selected for admission finally. Thus, considering the above selection process, everything depends upon the merits and performance of the individual candidate and it hardly matters from which institute / University the petitioner has studied except that the institute / university must have been recognised by the statutory bodies and authorities like UGC, Central Government and / or the State Government. Even as admitted by the respondent No.2 AIU, AIU does not claim any right or responsibility with regard to grant of recognition to academic degree to Indian University. The AIU has also clearly admitted that AIU is the private body registered under the Societies Registration Act, 1986 created by Vice Chancellors of Universities and does have any responsibility or authority which accord recognition of degrees of Indian University and that AIU has never written / insisted upon IIMs to provide such a

stipulation. While dealing with Para-15 of the petition, AIU has also admitted that such stipulation has never appeared in any eligibility criteria to any educational institution. In the backdrop of the aforesaid facts and selection process, the stipulation of recognition in the admission procedure of obtaining recognition of the degree by AIU is not only unreasonable but arbitrary and that it has no nexus with admission process. To deny a candidates to allow them to take part in further selection process amounts to taking away the fundamental right of the petitioners for getting admission in a particular institute. Bearing in mind the aforesaid facts, the objections and contentions and the judgments cited before this Court on behalf of the IIM are required to be considered and dealt with as under :

##. It is the contention on behalf of the respondent No.1 - IIM that the IIM is a well reputed Institute and that the same is the Institute which is pioneer in the field of management education in India is widely regarded as the best business school in the country and in order to achieve and maintain the high standard of its programme, it is essential, among other things, to ensure that the participants admitted to the programme also bring with them certain standard of basic qualification and therefore, it is considered prudent to prescribe some kind of quality certification of qualification for joining the programme and hence, it has been decided that candidate aspiring for admission to their PGPs should have a bachelor's degree recognised by the Association of Indian Universities and further that it is a policy decision and therefore, this Court should not interfere with the same in exercise of powers under Article 226 of the Constitution of India, more particularly, the same can be considered to be an administrative decision. Shri Upadhyay, the learned advocate for the respondent No.1 has replied upon para-13 of the decision of this Court in case of HEMANT L. LEUVA. V. H.S.SHAH, 1997 (1) GLR 853 and has submitted that in absence of legal or constitutional infirmity, substitute its judgment for that of academicians, as if sitting in appeal the High Court cannot in exercise of its jurisdiction under Article 226 of the Constitution of India (a) relax Rules governing admission to educational institutions or rewrite them (b) devise a scheme of its own relating to admission, in place of that made by the statutory authority, and (c) direct the education institute to admit a particular candidate to a course contrary to the rules.

So far as the reliance placed upon the said

judgment is concerned, there is no dispute with regard to proposition of law. However, the said judgment is not applicable in the facts and circumstances of the case on hands. Here, it is not the case of relaxation of statutory rules and / or directing the education institution to admit a particular candidate to a course contrary to the rules. In the very judgment, it is also observed by this Court that in the matter of admissions, the Court will not interfere unless the act complained of is clearly beyond jurisdiction or contrary to the statutes, rules or regulations governing the institution, or there is a statutory duty which the authority has failed to perform or the impugned act is a mala fide or arbitrary. Thus, whenever it is found that act complained of is found to be arbitrary, then in that cas, the Court can interfere.

##. The next decision which is relied upon by respondent No.1 is in case of STATE OF GUJARAT & ANR V. BRIJ KISHORE GARG, 2000 (1) GLR 884, more particularly, para-11 of the said decision. The other decision relied upon on behalf of IIM is in case of STATE OF RAJASTHAN AND OTHERS V. LATA ARUN, (2002) 6 SCC 252, more particularly, para-10 which reads as under :

"10. The points involved in the case are twofold : one relating to prescription of minimum educational qualification for admission to the course and the other relating to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than + 2 or 1st year of TDC for the purpose of admission. Both these points relate to matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. That is not to say that such matters are not justiciable. In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the

candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates."

The Hon'ble Supreme Court was considering the case with regard to prescription of minimum education qualification for admission to the course and the recognition of Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than +2 or 1st year TDC for the purpose of admission and considering the same, the Hon'ble Supreme Court has observed that both these points relate to matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute and that it is not for Courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognised as equivalent to the prescribed qualification in the case. However, the Hon'ble Supreme Court has also observed in the said paragraph that in any appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates.

##. The next judgment which is relied upon by the respondent IIM is the decision in case of KRISHNA PRIYA GANGULY ETC. V. UNIVERSITY OF LUCKNOW AND OTHERS, AIR 1984 SC 186, more particularly, para-19 and 26 of the said decision, it is contended that the High Court cannot relax the rules and rewrite them. In the said judgment the Hon'ble Supreme Court was considering the rules with regard to admission to Post Graduate Medical Course and for that Academic Body prescribed that marks obtained in MMBS Examination is the criteria, the Hon'ble Supreme Court of India has held that where there is statutory rules, the High Court could not revise its any criteria for admission. There is no dispute with regard to the said proposition of law and determination of powers of High Court under Article 226 of the Constitution of India. What is required to be considered is the eligibility criteria and the stipulation which is prescribed by the IIM is reasonable or has nexus with the admission process or not ?

##. The next judgment which is relied upon on behalf of the IIM is RAJENDRA PRASAD MATHUF V. KARNATAKA UNIVERSITY AND ANOTHER, AIR 1986 SC 1448, more particularly, para-7 of the said judgment, by which, the learned advocate appearing on behalf of the IIM has relied upon observations of the Hon'ble Supreme Court to the effect that it is for each University to decide the question of equivalence of examination and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise.

Now, so far as the said judgment is concerned, the question of equivalence and that the decision was taken by the Karnataka University not to recognize the higher secondary examination of State of Rajasthan for the first year examination of University of Rajasthan, Udaipur as equivalent to the pre-university examination of Pre-education Board, Bangalore. In the present case, the petitioners have studied in a recognised institute / deemed University. The only insistence on the part of the IIM is that the University / Institute ought to have been recognised by the AIU. As stated hereinabove, AIU is not having authority to accord any recognition. A candidate is required to be given admission on the basis of his own performance in CAT, group discussion and personal interviews. Under the circumstances, the said judgment will not be helpful to the respondent No.1 in the facts and circumstances of the case.

##. The next judgment which is relied upon with regard to the powers of the High Court under Article 226 of the Constitution of India in case of ASHISH P. JOSHI V. GUJARAT UNIVERSITY, 2001 (3) GCD 2394 and the other decision in case of RAJENDRA R. DAVE V. GUJARAT SECONDARY EDUCATION BOARD AND ANR, 1980 (2) GLR 318, more particularly, para-7, so also, reliance is also placed on PARITOSH MAGHRAJ CALL V. GUJARAT UNIVERSITY AND ANR, 1996 (1) GLR 640 and emphasis supplied on observations made in para-7, 8, 11 and 16.

There is no dispute with regard to the proposition of law laid down by this Court in the aforesaid judgments and powers of the High Court under Article 226 of the Constitution of India.

##. The learned advocate appearing on behalf of the IIM has also relied upon the decision in case of DILIP K. DOSHI & ANR. V. VICE CHANCELLOR & ORS., 1987 (1) GLR 411, more particularly, para-12 and has submitted that the Court should be slow and reluctant to interfere with

the academic decision into arena and to interfere with the academic decisions of an autonomous University.

##. The learned advocate appearing on behalf of the IIM has relied upon the judgment of the Hon'ble Supreme Court in case of CHANDIGARH ADMINISTRATION AND ANOTHER ETC. V. MANPREET SINGH AND OTHERS, AIR 1992 SC 435, more particularly, relied upon para-15, 20 and 23 of the said decision and emphasised that assuming that the rule was bad in law and was discriminatory then also, the only course available to it to strike down the offending rule and direct rule framing authority to reframe it and to make admissions accordingly and that the High Court does not and / or act as appellate authority over the orders / actions of the subordinate authorities / tribunals and its jurisdiction is supervisory in nature.

##. The next decision relied upon on behalf of the IIM in case of MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS V. DR.SUSHIL V. PATKAR AND OTHERS reported AIR 1991 SC 1733 in support of his submission that normally High Court should not interfere in an academic matter.

The respondent IIM has also relied upon the judgment of this Court in case of SONI VARSHABEN RASIKLAL V. DIRECTOR OF EDUCATION, GANDHINAGAR & ANR, 1989 (2) 907 which deals with age limits and the Government has in its wisdom fixed the age limit to contend that the High Court would not interfere with such a decision. In support of his submission, the aforesaid proposition of law,the next decision which is relied upon, the learned advocate appearing on behalf of the IIM in case of PATHALJIBHAI NATHALBHAI CHAVDA V. SAURASHTRA UNIVERSITY AND ORS, 1998 (1) GLH (U.J.) 21 and the other decision in case of PRADEEPKUMAR CHAUHAN V. REGISTRAR, GUJARAT UNIVERSITY & ORS. 2000(2) G.L.H. 137 and contended that the High Court cannot sit in appeal over the decision taken by the University and in case where two views are possible on an interpretation, the view that is one taken by such University, has to be accepted by the Court and no writ can be issued to University that it must follow the other view.

In the above referred decisions, this Court was considering the question with regard to equivalence of the degree conferred by the other University but it is not question here and therefore, the aforesaid judgments in my opinion are not applicable in the facts and circumstances of the case on hands.

##. Relying on the judgment in case of MANDAN LAL AND

OTHERS V. STATE OF J & K AND OTHERS, (1995) 3 SCC 486, it has been submitted that the petitioners have participated in the selection process knowing full well the stipulation in the eligibility criteria and therefore, it is not now open to the petitioners to challenge the same. Thus, according to the learned advocate for the respondent-IIM, the conduct of the petitioners is also required to be considered and taken into consideration.

Thus, the sum and substance of the arguments and bone of contentions on behalf of the IIM relying on the aforesaid decisions of the Hon'ble Apex Court and this Court are that while exercising the powers under Article 226 of the Constitution of India, this Court is not sitting as appellate authority and the High Court should not direct to grant admission contrary to the Rules and / or rewrite the rules and that in a academic questions, the High Court should not normally interfere and that, so far as the decision on hands of the IIM to stipulate that only those degrees recognised by AIU will be considered for the purpose of allowing the candidate for further admission process in IIM is realm in the policy decision of the respondent and that IIM having its own name in the field of management education in India, this Court should not interfere in the said decision which is being followed and practised since last ten years and therefore, it is requested to dismiss the present special civil applications.

##. While dealing with matter related to Educational Institute having high reputation such as National Institute of Mental Health and Neuro Sciences (NIMHANS), New Delhi, the Hon'ble Supreme Court in the decision in case of K.SHEKAR V. V.INDIRAMMA AND OTHERS, (2002) 3 SCC 586 has observed that although ordinarily the courts would be reluctant to so interfere, educational institutions however highly reputed, are not immune from judicial interference. Thus, even considering the fact that IIM is pioneer in the field of management education in India and is widely regarded as the best business school in the country, they are not immuned from judicial interference while exercising the powers under Article 226 of the Constitution of India if ultimately it is found that the decision of such reputed institution is unreasonable, arbitrary and / or discriminatory and the stipulation has no nexus with admission process and is denying to meritorious candidate even to allow him to further participate in admission process, then, certainly, it is in fact, duty of the High Court to interfere at this stage and exercise the powers under

Article 226 of the Constitution of India. Thus, not to allow a candidate to participate in the admission process itself, amounts to taking away his fundamental rights for considering his case on merits for admission.

##. Now, it is required to consider whether stipulation while determining the eligibility criteria for allowing a candidate for getting admission in IIM to the effect that Bachelor's degree obtained by a candidate is recognised by AIU and in that case only the candidate would be considered to be eligible for admission in IIM, is reasonable and / or has nexus with the admission process, is just and valid or not ? As stated herein above and considering the admission process for getting admission in PGP in IIM, everything depends upon the performance of a candidate in CAT examination, group discussion and personal interview. Therefore, whether a student studied in a particular institute and / or University, as such, does have that much importance so far as admission is concerned. Thus, degree recognised by AIU and / or institute / University recognised by AIU has no nexus with admission of a candidate to PGP course in IIM. As stated hereinabove and even admitted by AIU, AIU has no authority to accord recognition to any particular institute and / or University in the field of academic education. Thus, considering the aforesaid facts and admission process, such a stipulation to the effect that a candidate from where he has studied and the degree obtained by him, must have recognition by AIU is unreasonable, arbitrary as it has no nexus with admission process and actual admission in the IIM and thus, the same requires to be quashed and set aside. It is required to be noted that such a stipulation would lead to ignoring the recognition accorded by the statutory authorities like U.G.C., Central Government and the State Government and ignoring the institute/s which are having recognition in accordance with law, rules and regulations. The IIM cannot ignore the fact that such institute and / or Universities are recognised by the Universities Grants Commission and the Central Government and / or State Government and by the Statutory Authorities, more particularly, the AIU is not having authority to accord any recognition to Indian University. When AIU has no jurisdiction and / or authority to accord any recognition to Indian University and even as admitted by the AIU that it does not have any authority to accord any recognition to Indian University, such a stipulation to have recognition from AIU itself is, as such, non existence. Under the circumstances, the stipulation of recognition in the admission procedure of obtaining recognition of the degree by Association of Indian

University for the purpose of admission in PGP at IIM is required to be quashed and set aside.

##. Even as held by the Hon'ble Supreme Court of India in case of STATE OF RAJASTHAN AND OTHERS V. LATA ARUN, 2002 (6) SCC p.252, in an appropriate case, the Court can examine whether policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground, whether the decision has been taken on consideration of relevant aspects of the matter, whether exercise of the power is obtained with mala fide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates. As stated hereinabove, the stipulation itself is based on irrelevant and irrational consideration and it is not based on a fair and rational and reasonable ground and decision is taken not considering the relevant aspects of the matter i.e. admission of a candidate mainly and solely based upon his own individual performance at CAT, group discussion and personal interview. Under the circumstances also, the decision and the aforesaid stipulation is required to be quashed and set aside and it is set aside accordingly.

##. Now let us examine the object for which the aforesaid stipulation to have the Bachelor's degree recognised by AIU. It is submitted that only with a view to see that only those students / candidates are admitted who are coming from a reasonably good institution / University. It cannot be disputed that the institutions / Universities who are the members of the AIU are reasonably good institutions / universities. But that does not mean that other institutions / universities who are not the members of AIU are not reasonably good. There might be so many reasons for not being the member of AIU, such as, non consideration of applications for membership and / or delay in deciding the applications for membership. As stated hereinabove, respondent No.3 has already applied for membership of AIU and the same is pending consideration and even the visiting team has also visited the respondent No.3 University. It is required to be noted at this stage that it is nobody's case that respondent No.3 is bad and / or not good university. Under the circumstances, to consider only those institutions / universities who are recognised by AIU as reasonably good institution / university and no other institutions / universities as reasonably good itself is arbitrary and unreasonable.

##. The next point which is required to be considered is the submission and contentions on behalf of the respondent No.1 - IIM to the effect that once the petitioners have participated in selection knowing full well the aforesaid criteria in July, 2004 and that it is not open to the petitioners to challenge the same now, is concerned, it is required to be noted that it is a question of future of meritorious students who have secured 98.99 % marks in CAT, they were under bonafide impression that the respondent No.3 had already applied for membership of AIU and by the time the actual admission process starts after CAT, the respondent No.3 Institute would be getting membership and now when they are not permitted to participate in the further admission process itself, though having secured more than 98.99 % marks in CAT, only on that ground, it cannot be said that the petitioners cannot challenge the same, more particularly, when it is found that the same is unreasonable and arbitrary and has no nexus with admission process. In fact, not permitting and / or allowing the candidate to participate in admission process itself amounts to taking away his fundamental rights of considering his case for admission on merits which is solely based upon his personal merits and performance. Under the circumstances, the objections on the part of the respondent No.1-IIM institute requires to be rejected.

##. The next contention and the objection on the part of the respondent No.1 IIM to the effect that result was declared in December, 2004, the petitioners have preferred the petition in March, 2005 which disentitle the petitioners to get any relief is concerned, it is again required to be noted that the petitioners are students and that after result of the CAT, they were waiting for actual initiation of further process such as group discussion and personal interview which started in February, 2005 and in the mean time, they have made their best efforts by approaching the IIM by way of communications and when they have failed, approached this Court by way of present special civil applications. In fact, they have approached this Court before declaration of the final list and at the time when the group discussion and personal interview were going on. In fact, it is the case of the petitioners that so far as one candidate from IIT, Gauhati who is not a member of AIU is admitted for PGP Study and instance of one such student viz. Pardhan Chaudhry from said IIT, Gauhati is relied upon and pressed into service for emphasizing the ground of discrimination. The said factum has not been denied by the respondent No.1 - IIM and therefore, on

that count, the action of the respondent No.1 institute is discriminatory and violative of Article 14 of the Constitution of India.

##. In backdrop of the aforesaid facts of the case on hands, now the question which requires to be considered is that what final relief can be granted in favour of the petitioners. The petitioners are meritorious students who have studied from a recognised deemed university recognised by the statutory authorities and the respondent No.3 from where the petitioners have studied is a body corporate having established by Act No.6 of 2003 of the Government of Gujarat. It is nobody's case that respondent No.3 is in fact not a good University. All the petitioners have appeared in CAT examination conducted by the very IIM and they have secured more than 98 % marks and one of the petitioners has secured 99.98 % marks and because of the aforesaid unreasonable and arbitrary action of the respondent No.1 - IIM while stipulating the eligibility criteria of obtaining of recognition of a degree by AIU, the petitioners are not allowed and permitted to further participate in the admission process such as group discussions and personal interviews. Thus, the petitioners are denied an opportunity to participate in the admission process and to consider their case for admission on merits. It is not that by appearing in group discussion and / or personal interview straightaway the candidate is required to be admitted in PGP at IIM. The only thing is to allow and permit the petitioners to participate in admission process and considering their case on merits. It is the case of the respondent No.1 that so far as group discussion and personal interviews of other candidates are concerned, it is already over but it is not an end of the matter. The situation has not reached and / or irreversible situation when nothing can be done. The only thing which is required to be done now is to have one more batch of group of discussion and to conduct personal interview of the petitioners. But to deny an opportunity to the petitioners to permit and / or allow them to participate in the admission process at the threshold itself amounts to taking away their fundamental rights for considering their case on merits due to the aforesaid unreasonable and arbitrary stipulation. Thus, even if it is held that the aforesaid stipulation and the action of the IIM is unreasonable, arbitrary and has no nexus with admission process and actual admission and is discriminatory and taking away the fundamental rights of the petitioners and then also, to deny the final relief to the petitioners itself will be atrocious and unreasonable. Having held that the aforesaid stipulation

and the action of the respondent No.1 IIM is unreasonable and arbitrary and as such has no nexus with actual admission process and admission, the petitioners are entitled to final relief. It is true that this Court may not grant and / or issue any direction to the respondent No.1 - IIM to grant admission to the petitioners in PGP course but still the Court can direct the respondent No.1 IIM to have group discussion and personal interview of the petitioners and to allow and permit the petitioners to participate in admission process for getting admission in PGP course and to consider their case on merits, more particularly, when the final list is not published. It is the case of the petitioners and which is not denied by the learned advocate appearing on behalf of the respondent No.1-IIM that so far as the IIM, Lucknow is concerned, group discussions are continued and as admission process is for all the IIMs, the petitioners also can be permitted to take part in group discussion and personal interview along with batches of IIM, Lucknow. However, it is ultimately for the respondent No.1 to take an appropriate decision with regard to the same.

##. For the reasons stated above and the aforesaid finding and conclusion above, all three petitions succeed. The stipulation of recognition in the admission procedure for admission in Post Graduate Programmes in Management (PGP) at IIM of obtaining of recognition of degree by Association of Indian Universities is hereby quashed and set aside as the same being unreasonable, arbitrary and has no nexus with admission process and actual admission and the respondent No.1 is hereby directed to allow and include the petitioners in the admission procedure, such as, group discussion and personal interview etc. and to consider their case for admission in the said course subject to fulfilling other stipulations on merits before declaration of final list for admission in the aforesaid course immediately.

##. However, it is made clear that the benefit of this judgment for this academic year would be given only to the petitioners of three petitions and the entire admission process for this academic year will not be disturbed by allowing the present special civil applications and quashing and setting aside the stipulation as per the directions above in eligibility criteria. In other words, except the present petitioners for admission process of the current academic year, the applicability of the present judgment would be prospective i.e. from the next academic year.

Rule, in all three petitions, is made absolute to the aforesaid extent, however, with no order as to costs.

FURTHER ORAL ORDER

At this stage, Shri Paresh Upadhyay, the learned advocate appearing on behalf of respondent No.1 - IIM requests to stay implementation and operation of this judgment. Considering urgency and for the reasons stated in the main special civil application, prayer made at this stage, is rejected.

Date : 15.4.2005 [M.R.Shah, J.]

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